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2 PAUL M. BERTONE, ESQ. (#004533)
3 ERICKSON, THORPE & SWAINSTON
4 99 West Arroyo Street
5 P.O. Box 3559
6 Reno, Nevada 89505
7 Telephone: (775) 786-3930
8 *Attorneys for Plaintiffs*

✓ FILED
ENTERED
RECEIVED
SERVED ON
COUNSEL/PARTIES OF RECORD

OCT - 6 2010

CLERK US DISTRICT COURT
DISTRICT OF NEVADA
BY: DEPUTY

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA - RENO DIVISION

11 PAMELA D. LONGONI, individually
12 and as Guardian Ad Litem for LACEY
13 LONGONI, and JEAN M. GAGNON,

Case No.: 3:10-CV-00297-LRH-(VPC)

Plaintiffs,

14 vs.

15 GMAC MORTGAGE, LLC., a Delaware
16 Limited Liability Company, EXECUTIVE
17 TRUSTEE SERVICES, LLC., a Delaware
18 Limited Liability Company, ILLEANNA
19 PETERSON, KATHLEEN GOWEN,
20 individuals, DOES 1-10; BLACK AND
WHITE CORPORATIONS 1-10,
corporations; ABLE & BAKER
COMPANIES 1-10, co-partnerships and
or limited liability companies,

Defendants.

MOTION TO ENLARGE TIME FOR SERVICE UPON INDIVIDUALLY NAMED

DEFENDANTS ILLEANNE PETERSON AND KATHLEEN GOWEN

21 COMES NOW, PAMELA D. LONGONI, individually and as Guardian Ad Litem for
22 LACEY LONGONI, and JEAN M. GAGNON by and through their attorneys of record,
23 ERICKSON, THORPE & SWAINSTON, LTD., and THOMAS P. BEKO, ESQ., and hereby
24 MOVE THIS Court for an Order enlarging the time of service, upon which to serve the
25 individually named defendants, ILLEANNE PETERSON and KATHLEEN GOWEN,

1 pursuant to FRCP 4(m). The plaintiffs seek this extension because they have not been able
2 to complete service because they do not have current addresses for the defendants. The
3 plaintiffs have sought this information through discovery, however, the existing defendants
4 have yet to respond to that discovery. Additionally, the plaintiffs have sought a waiver of
5 service pursuant to Rule 4, however, the time frame within which to respond to that request
6 has not expired.

7 **I. INTRODUCTION, STATEMENT OF FACTS AND PROCEDURAL HISTORY**

8 A compliant was filed against the above captioned defendants, including ILLEANNE
9 PETERSON and KATHLEEN GOWEN, within the Second Judicial District Court of the
10 State of Nevada on or about April 28, 2010. According the Complaint, ILLEANNE
11 PETERSON and KATHLEEN GOWEN, were acting within the course and scope of their
12 employment, and/or at the express direction of, or with the authorization and ratification of
13 EXECUTIVE TRUSTEE SERVICES, LLC, and GMAC MORTGAGE LLC, when the
14 events alleged in the Complaint occurred. (*See, Complaint*). Therefore, pursuant to
15 F.R.C.P. 4(m), such service should have been effected by August 26, 2010 (120 days after
16 the filing of the Complaint which was filed on April 28, 2010). On May 20, 2010, the
17 defendants removed this case to the United States District Court of Nevada (*See, Notice of*
18 *Removal #1*).

19 To date, the plaintiffs have not yet completed service on the defendants ILLEANNE
20 PETERSON and KATHLEEN GOWEN. Through investigation, this office was unable to
21 derive the locations and addresses of these individually defendants. The plaintiffs sought
22 information as to the locations of such individually named defendants in written discovery
23 to the defendants, GMAC MORTGAGE and EXECUTIVE TRUSTEE SERVICES,
24 however, the defendants have not yet responded to that discovery. Moreover, by mail dated
25 July 27, 2010, the plaintiffs have sought a waiver of service pursuant to F.R.C.P. 4(d). The
26 defendants have not yet responded to that request and they have until September 25, 2010,
27 to file an appearance under that statute. That 120-day service period expires on September
28 25, 2010.

II. ARGUMENT

F.R.C.P. 4(m) provides that if a defendant is not served within 120 days after the complaint is filed, if a plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period. Further, the new subdivision (m) explicitly provides that the court shall allow additional time if there is good cause for the plaintiffs' failure to effect service in the prescribed 120 days, and authorizes the court to relieve a plaintiff of the consequences of an application of this subdivision even if there is no good cause shown.

9 In this case, the plaintiffs simply do not have the information as to the current
10 whereabouts of these defendants. That information would presumably have come from the
11 corporate defendants if they had filed a timely response to the plaintiffs' written discovery.
12 Because they filed motions to extend the time to respond to such discovery rather than
13 responding to it, the plaintiffs will not have that information in time to complete service
14 within the allotted period. Therefore, they seek this extension. The plaintiffs seek an
15 additional period of 60 days after any extension granted to the defendants to respond to the
16 plaintiffs written discovery requests (First Set of Interrogatories and Requests for Production
17 of Documents). This will also allow the plaintiffs to determine whether the defendants will
18 waive service as provided for in Rule 4.

19 | III. CONCLUSION

20 Good cause exists to enlarge the time for service of the individually named
21 defendants. Therefore, the Court should extend the service time for a period of 60 days.

DATED this 26th day of August, 2010

ERICKSON, THORPE & SWAINSTON, LTD.
99 West Arroyo Street
P. O. Box 3559
Reno, Nevada 89502

By

THOMAS P. BEKO, ESQ.
PAUL M. BERTONE, ESQ.
Attorney for Plaintiffs

IT IS SO ORDERED
John J. nn
U.S. MAGISTRATE JUDGE

DATED: October 6, 2010

1 THOMAS P. BEKO, ESQ. (#002653)
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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA - RENO DIVISION

PAMELA D. LONGONI, individually
and as Guardian Ad Litem for LACEY
LONGONI, and JEAN M. GAGNON,

Case No.: 3:10-CV-00297-LRH-(VPC)

Plaintiffs,

vs.

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individuals, DOES 1-10; BLACK AND
WHITE CORPORATIONS 1-10,
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COMPANIES 1-10, co-partnerships and
or limited liability companies,

Defendants.

/

AFFIDAVIT OF THOMAS P. BEKO, ESQ., IN SUPPORT OF MOTION TO
ENLARGE TIME FOR SERVICE UPON INDIVIDUALLY NAMED
DEFENDANTS ILLEANNA PETERSON AND KATHLEEN GOWEN

1. I am over the age of eighteen years, and a resident of the County of Washoe, State of Nevada.
2. I am the attorney for plaintiffs and a partner with the Law Offices of Erickson, Thorpe & Swainston, Ltd., 99 West Arroyo Street, Reno, Nevada, licensed to practice law

1 in the State of Nevada.

2 3. A compliant was filed against the above captioned defendants, including
3 ILLEANNE PETERSON and KATHLEEN GOWEN, within the Second Judicial District
4 Court of the State of Nevada on or about April 28, 2010. According the Complaint,
5 ILLEANNE PETERSON and KATHLEEN GOWEN, were acting within the course and
6 scope of their employment, and/or at the express direction of, or with the authorization and
7 ratification of EXECUTIVE TRUSTEE SERVICES, LLC, and GMAC MORTGAGE LLC,
8 when the events alleged in the Complaint occurred.

9 4. Therefore, pursuant to F.R.C.P. 4(m), such service should have been effected by
10 August 26, 2010 (120 days after the filing of the Complaint which was filed on April 28,
11 2010. On May 20, 2010, the defendants removed this case to the United States District
12 Court of Nevada (*See, Notice of Removal #1*).

13 5. To date, the plaintiffs have not yet completed service on the defendants Illeanna
14 Peterson and Kathleen Gowen.

15 6. Through investigation, this office was unable to derive the locations and addresses
16 of these individually defendants.

17 7. The plaintiffs sought information as to the locations of such individually named
18 defendants in written discovery to the defendants, GMAC MORTGAGE and EXECUTIVE
19 TRUSTEE SERVICES, however, the defendants have not yet responded to that discovery.

20 8. By mail dated July 27, 2010, the plaintiffs have sought a waiver of service pursuant
21 to F.R.C.P. 4(d). The defendants have not yet responded to that request and they have until
22 September 25, 2010, to file an appearance under that statute. That 120-day service period
23 expires on September 25, 2010. Good cause exists to enlarge the time for service of the
24 individually named defendants. The statute of limitations on this action expires on August
25 26, 2010.

26 ///

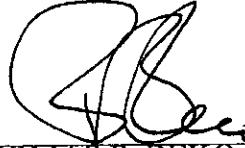
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Case 3:10-cv-00297-LRH-VPC Document 28 Filed 08/26/10 Page 6 of 7

1 9. The present address and locations of ILLEANE PETERSON and KATHLEEN
2 GOWEN are unknown.

3 DATED this 26th day of August, 2010.


THOMAS P. BEKO, ESQ.

4
5 SUBSCRIBED and SWORN TO before me
6 this 26th day of August, 2010.

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8 
9 Notary Public



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Case 3:10-cv-00297-LRH-VPC Document 28 Filed 08/26/10 Page 7 of 7

1 **CERTIFICATE OF SERVICE**

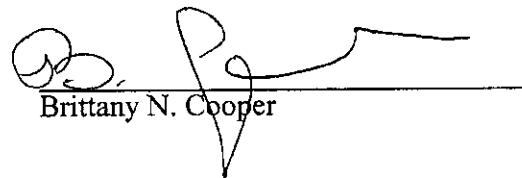
2 Pursuant to FRCP 5(b), I certify that I am an employee of ERICKSON, THORPE &
3 SWAINSTON, LTD. and that on this day I personally served a true and correct copy of the attached
4 document by:

- 5 U.S. Mail
6 Facsimile Transmission
7 Personal Service
8 Messenger Service
 CM/ECF System

9 addressed to the following:

10 David Hill Bahford
11 Bradley Arant Boult Cummings LLP
100 N. Tyron Street, Suite 2690
12 Charlotte, NC 28202
13 *Attorney for Defendants GMAC Mortgage, LLC,
Executive Trustee Services, LLC,
Illeanna Peterson and Kathleen Gowen*

14 DATED this 26th day of August, 2010.

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17 Brittany N. Cooper
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